



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 9, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0120

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 9. When Making an Arrest, Officers May Seize Non-Arrested Companions for Articulate and Reasonable Officer Safety Concerns	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 9. When Making an Arrest, Officers May Seize Non-Arrested Companions for Articulate and Reasonable Officer Safety Concerns	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 stopped him without a lawful reason, confiscated his driver's license, and was unprofessional during their interaction. It was further alleged that Named Employee #2 did not properly supervise Named Employee #1.

SUMMARY OF INVESTIGATION:

According to the Complainant, he was driving in downtown Seattle when Named Employee #1 (NE#1) stopped his vehicle "for no reason." He stated that, during the stop, NE#1 directed him to "shut up" three times and said that those were NE#1's exact words. He also stated that NE#1 confiscated his driver's license and that it was never returned to him. This OPA investigation ensued.



On January 31, 2020, SPD carried out a narcotics operation near the cross streets of 3rd Avenue and Bell. NE#1, a bicycle officer, was part of the arrest team. The team included uniformed bike officers like NE#1, as well as a plain clothes officer referred to here as Witness Officer #1 (WO#1). It was overseen by an SPD sergeant, who is Named Employee #2 (NE#2).

WO#1 observed an individual conduct two suspected narcotics transactions on the street. He then saw the Complainant in this case approach the individual and walk with him toward a vehicle on the other side of the street. The Complainant entered his vehicle on the driver's side and the individual got into the passenger seat. At that time, WO#1 radioed for the team to conduct a stop of the Complainant's vehicle and in order to arrest the individual.

NE#1 conducted the stop, which was captured by Body Worn Video (BWV). The BWV showed that NE#1 contacted the Complainant while he was seated in the driver's seat. NE#1 greeted the Complainant and directed him to put his car in park. The Complainant asked NE#1: "why are you being so mean to me?" NE#1 denied that he was being mean and told the Complainant to put his car in park three times, which the Complainant ultimately did.

The Complainant asked NE#1 what he had done. NE#1 told him that he was conducting a drug investigation and that this was the reason for the stop. NE#1 asked the Complainant "do you have an ID on your person, sir?" The Complainant produced the ID. The Complainant, who appeared upset, told NE#1 that he was nervous. NE#1 explained the reason for the stop in more detail while another officer ran the Complainant's license. The check revealed that the Complainant's license was suspended and that the Complainant had a DUI warrant from Bonney Lake. After conversing with NE#2, NE#1 explained to the Complainant that, due to the suspended license, he could not lawfully operate his vehicle.

NE#1 also explained that the Complainant's passenger, the individual WO#1 observed conducting the drug transactions, was being arrested. The Complainant said he wanted to park his car and go home. NE#1 consulted with NE#2 and told the Complainant that he would be mailing a citation for driving with a suspended license in the third degree to the Complainant, but that the Complainant was free to go. The Complainant asked NE#1 for his license back. NE#1 stated that he had already given it back to the Complainant. OPA notes that this appeared to be error, as BWV did not record him handing the Complainant's license back. NE#1 gave the Complainant a business card with the incident number on it. Ultimately, the Complainant left with the business card after parking his vehicle. OPA notes that neither NE#1 nor any other officer was recorded telling the Complainant to "shut up" and OPA observed no profanity or demeaning language used by any officer.

In February, the Complainant contacted SPD because he had not yet received his citation and still did not have his license. A sergeant took the call. The sergeant spoke to NE#1, who realized that he had in fact failed to return the license. NE#1 told the sergeant that he had placed the license in outgoing mail on February 13. OPA contacted the Complainant in March and learned that he still had not received his license. Ultimately, OPA was unable to locate the license or determine who, if anyone, bears the fault for its disappearance.

OPA interviewed the involved employees. NE#1 stated that he had to give the Complainant multiple commands to put his car in park. He explained that he and the other officers were on bicycles while the Complainant was in a car, and that, for safety reasons, it was necessary to ensure that the car could not be driven away from the scene. NE#1 also said that, due to the other individual's presence in the Complainant's car, he had probable cause to conduct the stop in order to arrest the individual for the crime WO#1 saw him commit. He asserted that he, accordingly, also had the necessary reasonable suspicion to detain the Complainant until the arrest was made. Moreover, after learning of



the warrant, NE#1 said he would have had probable cause to arrest the Complainant as well but decided that was unnecessary.

WO#1 described seeing the individual engage in drug transactions. He also saw the individual and the Complainant interact and described seeing them get in the Complainant's vehicle together. This gave him reasonable suspicion to believe that the Complainant and the individual might also be engaged in a drug transaction.

NE#2 stated that he screened the arrest of the individual who was the passenger in the Complainant's car. He also spoke with NE#1 about how to handle the contact with the Complainant. He said that he agreed with NE#1's decision-making during this incident and that, ultimately, his role as a supervisor was to oversee the operation and screen any arrests.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.220-POL-2 – Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

SPD Policy 6.220-POL-2(1) governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity." (SPD Policy 6.220-POL-1.) SPD Policy further defines reasonable suspicion as: "Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct." (*Id.*) Whether a Terry stop is reasonable is determined by looking at "the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop." (*Id.*) While "[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it 'cannot provide the justification for the original stop.'" (*Id.*)

OPA finds that NE#1's stop of the Complainant was legally justified and, as such, complied with policy. NE#1's justification to detain the Complainant rested on two independently sufficient grounds. First, WO#1 developed reasonable suspicion that the Complainant was engaged in a drug transaction based on observing him contact the individual who WO#1 saw complete two other drug transactions moments before. NE#1 was permitted to rely on WO#1's observations in developing the reasonable suspicion to detain the Complainant. *See State v. O'Cain*, 108 Wn.App. 542, 550-51 (Wn.Ct.App. 2001). Second, NE#1 could conduct a limited detention of the Complainant for the purpose of officer safety under the "automatic companion rule," which permits officers to temporarily seize the companions of an arrested person if necessary to control the scene of an arrest. *State v. Flores*, 186 Wn.2d 506, 522-23 (2016). Here, because NE#1 and the other officers were arresting the Complainant's passenger, it was appropriate to seize the Complainant to stop him from potentially driving off and potentially compromising the arrest and endangering officers and others.

OPA notes separately that NE#1 treated the Complainant with professionalism and respect during their interaction. While the Complainant appears to have been distressed at being stopped by police, BWV did not record NE#1 speaking to him in a demeaning manner. While NE#1 did repeat his instruction to put the vehicle in park, this was necessary because NE#1 and the other officers were on bicycles and, until the vehicle was parked, they were at an elevated risk of injury had the Complainant decided to flee. As soon as the scene was safe, BWV showed that NE#1



treated the Complainant professionally and explained his actions and the basis for the stop. It also showed NE#1 consulting with others, including NE#2, about how to handle the interaction in a way that did not overly burden the Complainant. OPA further notes that the Complainant was arguably under suspicion for serious crimes and had a warrant for his arrest, but that NE#1 appeared to determine that no law enforcement goal would be served by arresting him.

To the extent NE#1 erred here, it was in believing he had returned the Complainant's suspended license when he had not. While unfortunate and certainly an inconvenience to the Complainant, it was unintentional and did not convert a permissible *Terry* stop into a more severe intrusion. Moreover, there is no evidence in the record indicating that this failure was intentional.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #2

6.220-POL-2 - Conducting a Terry Stop 9. When Making an Arrest, Officers May Seize Non-Arrested Companions for Articulate and Reasonable Officer Safety Concerns

Pursuant to SPD policy, when officers are making an arrest, they may seize non-arrested companions of the arrestee when “articulate and reasonable officer safety concerns” justify doing so. (SPD Policy 6.220-POL-2(9).) “The scope and nature of the seizure must be objectively reasonable based on the factors justifying the detention.” (*Id.*) The seizure must end when the objective rationale for the seizure ceases to exist. (*Id.*)

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command

SPD Policy 1.020-POL-7 states that command employees are required to take responsibility for every aspect of their command. The policy further instructs that: “Employees in a supervisory role will coordinate and direct subordinates and allocate resources to achieve the operations objective.” (SPD Policy 1.020-POL-7.) Lastly, the policy makes clear that supervisors will “perform the full range of administrative functions relying upon policy, direction, training, and personal initiative as a guide for themselves and their command in achieving the highest level of performance possible.” (*Id.*)

Given that OPA finds that NE#1 did not violate policy when he detained and then cited the Complainant, OPA similarly concludes that NE#2 did not improperly supervise NE#1. As such and for the same reasons as stated above, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #3 - Allegation #1

6.220-POL-2 - Conducting a Terry Stop 9. When Making an Arrest, Officers May Seize Non-Arrested Companions for Articulate and Reasonable Officer Safety Concerns

Based on its review of BWV, OPA was unable to identify any other officers who seized the Complainant or, in doing so, behaved unprofessionally. As such, and for the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**